

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RICHARD A. SMITH,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

THE UNITED STATES OF AMERICA,
Counterclaim-Plaintiff,

vs.

RICHARD A. SMITH,
Counterclaim-Defendant.

MEMORANDUM DECISION AND
ORDER DENYING MOTIONS FOR
SUMMARY JUDGMENT AND
DENYING DEFENDANT'S
MOTION TO STRIKE

Case No. 2:05-CV-418 TS

This matter is before the Court on Plaintiff Richard A. Smith's Motion for Summary Judgment, Defendant the United States' Motion for Summary Judgment, and the United States' Motion to Strike.

The parties' Motions for Summary Judgment are basically cross-motions on the issue of whether Plaintiff Smith (Smith) was a "responsible person" within the meaning of § 6672(a) of the Internal Revenue Code¹ during the relevant time periods and is, therefore, liable for his employer's unpaid federal withholding taxes.

The United States submits evidence tending to establish Smith's authority over the company's business and fiscal affairs. Smith submits evidence that even if he possessed some indicia of control over the company, as a practical matter, he had none. Resolution of this conflicting evidence is properly the province of the jury.

The Court finds that there are material issues of fact on whether Smith was a "responsible party" during the relevant times. It is therefore


ORDERED that Smith's Motion for Summary Judgment (Docket No. 35) is DENIED. It is further

ORDERED that the United States' Motion for Summary Judgment Against Smith (Docket No. 39) is DENIED. It is further

ORDERED that the United States' Motion to Strike Parts IV and V of Plaintiff Smith's Reply to the United States' Opposition to Memorandum, Along with Plaintiff's Exhibit D Attached Thereto (Docket No. 51) is DENIED AS MOOT.

DATED November 30, 2006.

BY THE COURT:



TED STEWART
United States District Judge

¹26 U.S.C. § 6672(a).